

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

DAN COFFMAN

§

VS.

§

CIVIL ACTION NO. 1:10cv186

PEDRO M. BOYKIN, ET AL

§

MEMORANDUM OPINION

Plaintiff Dan Coffman, an inmate incarcerated at the Allred Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, filed this civil rights action against Pedro M. Boykin, Keith E. Gorsuch and Darlinda Wheeler.

Plaintiff alleges excessive force was used against him while he was incarcerated at the Stiles Unit. He has filed a motion seeking leave to proceed *in forma pauperis* in this action.

Analysis

On April 26, 1996, the president signed into law the Prison Litigation Reform Act. Pub.L. No. 104-134, 110 Stat. 1321 (1996). 28 U.S.C. § 1915(g), which was created by the Act, prohibits prisoners from repeatedly filing frivolous or malicious complaints. Section 1915(g) provides as follows:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action [*in forma pauperis*] ... if the prisoner has, on three or more occasions ...

brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

Prior to the date on which plaintiff filed this complaint, courts had dismissed three lawsuits filed by plaintiff as frivolous or for failure to state a claim.¹ As a result, Section 1915(g) is applicable.


Plaintiff alleges that on November 12, 2010, excessive force was used against him. However, he does not allege he has been subsequently threatened. Moreover, he has now been transferred away from the unit where the use of force took place. As a result, the allegations made in the complaint do not demonstrate plaintiff was in "imminent danger of serious physical injury" on January 30, 2010, the date his complaint was filed. Section 1915(g) therefore bars plaintiff from proceeding with this action on an *in forma pauperis* basis. This case will, accordingly, be dismissed.

¹ *Coffman v. Young*, No. 1:05cv135 (E.D. Tex. Aug. 9, 2006); *Coffman v. Fox*, No. 6:02cv315 (E.D. Tex. Aug. 19, 2002); *Coffman v. Thompson*, No. 6:00cv730 (E.D. Tex. Apr. 10, 2001).

Conclusion

For the reasons set forth above, this lawsuit will be dismissed without prejudice pursuant to 28 U.S.C. § 1915(g). An appropriate final judgment shall be entered.

SIGNED this the **7** day of **April, 2010**.

A handwritten signature in black ink, appearing to read "Thad Heartfield", written over a horizontal line.

Thad Heartfield
United States District Judge